

November 26, 1975

R. L. Hames
Chief Counsel

MEETING WITH ADMINISTRATORS AND PRISONERS AT OREGON STATE
PENITENTIARY

On November 20, 1975. I met in Portland, Oregon, with Miss Mavis Rowley, Mr. Val Tollefson, Dr. Glenn Warner, and Dr. Leonard Sagen to discuss the allegations of two prisoners in the Oregon State Penitentiary who are fearful of having or getting cancer as a result of their participation in a program funded by the AEC to determine the effect of ionizing radiation on human testis. The program was conducted by the Pacific Northwest Research Foundation from 1963 to 1973 under the direction of Dr. C. G. Heller. It was an outgrowth of earlier and concurrent research at the penitentiary to study the male reproductive system and how it is affected by certain drugs and hormones. The meeting was preliminary to our going to Salem, Oregon, to meet with prison officials and those prisoners who had participated in the program.

Miss Rowley was employed by the Pacific Northwest Research Foundation (of Seattle) as senior investigator and later as principal investigator of the program. In 1973, she left the Foundation and became employed by the Swedish Hospital in Seattle. Val Tollefson is with the legal firm that represents the Foundation. Dr. Warner is a radiation therapist employed by the Swedish Hospital in Seattle. He did the X-rays during the last two-thirds of the program. Dr. Sagen is a physician in Palo Alto, California. I understand he was employed by the AEC for about three years in the 1960's. He was not involved in any way with the program.

The prisoners' concern was apparently triggered by an article that appeared in the National Inquirer in October 1975 that contained incorrect and incomplete information about the program. Hal Waltz, one of the prisoner participants, wrote a letter dated October 20, 1975, to Miss Rowley saying he was quite disturbed after reading the Inquirer article, that he wanted a medical examination by a physician not connected with the penitentiary, that the calibration of the X-ray equipment and the lab work, shots, etc. were all

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performed by unqualified people, and he planned to contact an attorney to discuss redress in the matter. Miss Rowley told me that Mr. Waltz is represented by attorney Dan Ritter in Salem, Oregon. Another prisoner participant, Dan Mathena, is represented by attorney David Hilgeman, also of Salem.

A member of Mr. Hilgeman's firm telephoned Miss Rowley on November 18, 1975, saying that they knew of her plans to meet with the prison officials and prisoners in Salem on November 21, 1975, and asked if she would contact Mr. Hilgeman at that time. Val Tollefson advised her not to do so.

On November 21, 1975, we met with Mr. Cupps, director of the penitentiary, Warren Reed, who is the administrator, Bob Watson (or Watkins), who is in charge of programs at the institution, and Dr. Daniel Dilaconi, a physician who is employed by the penitentiary and who is also in private practice in Salem. He performed all the biopsies in connection with the program. The administrative people wanted to know if there is any basis for the prisoners' fears of cancer and Dr. Sagen assured them that there is virtually no possibility of such a result. He said some body organs, including the testis, are cancer resistant and cited the negative findings following the atomic bombings of Hiroshima and Nagasaki. Dr. Warner told them the precautions that were taken in connection with the X-rays and related equipment in the program were far in excess of those normally followed and would certainly prevent any "scatter" effect on other parts of the body. He also said that the equipment was thoroughly checked and that a technician from the Swedish Hospital was used to assure proper techniques. In that meeting it was agreed that complete medical examinations should be promptly offered to the prisoners and that they should be allowed to select a physician or physicians as needed from a panel of several doctors. Only 14 of the 67 prisoners who participated in the program are still in the penitentiary.

The prison officials made arrangements for a meeting that afternoon with the prisoner participants. A couple of them were in a forest work camp or other distant location and could not be brought to the meeting. As no attorneys had appeared at the meeting with the prison officials as expected, it was agreed that only Miss Rowley, Dr. Sagen, and Dr. Warner would meet with the prisoners. The meeting lasted about two hours and as described by Miss Rowley and the doctors, it was a rather stormy session. The men had numerous bizarre complaints that they attributed to the X-rays, e.g., they said they had swollen, numb, and painful testicles, back pain.

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swollen ankles, painful feet, painful joints--all of which they attributed to their participation in the program. They accused Dr. Warner of not being present during the X-ray procedures and didn't seem to want to believe Dr. Sagen's answers regarding the lack of causation between the X-rays and cancer. They said they were required to participate in the program and were not told about the risks and dangers involved. A few of the prisoners walked out of the meeting. Several, including Mr. Waltz and Mr. Mathena, said they were going to sue somebody for mental anguish, even though their medical examinations may prove completely negative. Several prisoners, in addition to Mr. Waltz and Mr. Mathena, said they had already discussed the matter with attorneys. They also asked for the name of the Federal agency that funded the program. Miss Rowley told them it was the AEC.

The next action is to offer complete medical examinations to the prisoners. It will then be a matter of waiting to see what action, if any, they take.

When I asked Miss Rowley about a follow-up program, she said there was such a program at the penitentiary after the X-ray phase was completed in May 1971. It consisted of repeat biopsies, etc., and would probably have continued but for the disability of Dr. C. G. Heller, who was the senior physician in charge of the program. He had a massive stroke in 1973 and could not continue the work. He remains incapacitated, and is lucid only for brief periods of time. He is presently in a rest home in Seattle. It seems that Dr. Heller was a unique individual who had the complete confidence of the prison officials as well as the prisoners, and his disability meant the end of the program at the penitentiary.

Dr. Alvin Paulsen who was, and may still be, conducting similar studies at the Washington State Penitentiary offered to continue Dr. Heller's program in Oregon but the prison officials would not allow it. Miss Rowley said they made it very clear that the Oregon studies had to be discontinued as soon as possible after Dr. Heller's inability to continue. She said she was in effect, kicked out at that time, which prevented any follow-up program for the men who remained in the penitentiary.

Miss Rowley said there was considerable discussion with the AEC over a long period of time regarding a follow-up program for the men who were released from the prison, but the costs and difficulty of locating them were such that the matter was dropped.

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I believe a follow-up program for the men who have been released (as well as for those in the penitentiary) would be advisable in view of these developments. If nothing more, it would indicate action instead of reaction if lawsuits are brought. This was discussed briefly during the meeting with the prison officials and Dr. DiIaconi argued against it, saying there is no reason to expect any adverse consequences and it would be a waste of time and money from a medical standpoint. It is hard to reconcile his comments with Miss Rowley's statements that a follow-up program was in effect for the men who remained in the penitentiary and it probably would have continued if the prison officials had not insisted that the entire program be discontinued.

During the meeting with the prisoners, some of them indicated they may be thinking of litigation as a result of their involvement in the drug program as well as the radiation program. Some of the men were participants in both programs. Miss Rowley is going to talk to Val Tollefson about the advisability of contacting the sponsors of the drug program to alert them to the possibility of such litigation.

The contract that was funded by the AEC was No. AT(45-1)-1780 with the Pacific Northwest Research Foundation. It expired on July 31, 1974. It was essentially a fixed-price research contract in which the equipment and supplies, etc., provided by the AEC plus a specified dollar amount was said to be the full consideration for the contractor's performance. The contract also provided that the contractor accepted sole responsibility for the conduct of the work.

The AEC entered into a comparable contract with the Swedish Hospital Medical Center for the period from October 1, 1974, to September 30, 1975, for work to be done by Miss Rowley and others which consisted of publications on studies of irradiated human testis tissues and body fluids and coding of materials on hand for future studies. She has submitted a proposal for an extension of the contract to cover preparation of data and publication of at least six papers over a two-year period incorporating the information obtained during the 1963-1973 research.

Miss Rowley is scheduled to go to Livermore, California, on December 4-5, 1975, at the invitation of the Lawrence Laboratories to present a paper on the program. She plans to cover the scientific work but anticipates questions on the administrative aspects, e.g., the informed consent of prisoner participants, what is covered, how it was explained, etc. She also said the paper will be read for her before the Radiological Society of America in the near future, but I do not know where and when it will be done.

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Miss Rowley said that Drs. Burr and Harvey at ERDA Headquarters planned to telephone her on Monday November 24, 1975, for a report on the meeting with the prison officials and prisoners.

Clyde T. Fitz. Attorney
Office of Chief Counsel

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